FILING COMPLAINTS OF UNETHICAL OR UNPROFESSIONAL CONDUCT AGAINST COUNSELORS AND PSYCHOTHERAPISTS

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INTRODUCTION

Contained in this paper is some basic background information which may be helpful in exploring the filing of charges for unethical or unprofessional conduct against counselors and psychotherapists who sexually exploit clients. The same mechanisms can be utilized for complaints of unprofessional conduct in non-sexual areas.

Sexual involvement with clients has traditionally been forbidden by all of the groups mentioned in this paper and all public statements on behalf of national organizations representing each field have reaffirmed this many times. Some state it clearly in codes of ethics and some do not, but all forbid it at present.

In many instances complaint procedures are complicated and involved, while in others quite vague. The assistance of an advocate or another professional often goes a long way to humanize the process for a client.

The groups covered in this paper include:

Page 1 Clergy and Pastoral Counselors

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Please note that chairpersons of committees, phone numbers, and addresses are subject to change. Those specifically cited may not be valid even months from now.

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COMPLAINTS OF UNETHICAL CONDUCT FILED AGAINST CLERGY; PASTORAL COUNSELORS

Members of the clergy do a considerable amount of pastoral counseling and are not infrequently found among the staff of mental health centers and hospitals working as psychotherapists. Some have professional degrees in addition to their divinity degrees so that complaints can occur through professional channels. However, for the clergyman working in a church, synagog, or cathedral complaints of sexual involvement with counselees (or church body members in general) are handled as either a disciplinary problem or as possible violations of the clergyman's contract with the church body.

Whatever body is responsible for ministerial standing, or governs the church or temple, or whatever organization in which the individual congregation has standing and membership can be appealed to with complaints. Many groups have detailed complaint procedures. Examples o groups one might appeal to are:

---Pastoral Relations Committee in the United Presbyterian Church
---Board of Directors of a Synagcg
---Committee of Church and Ministry in the United Church of Christ

Various statements of ethical principles exist within different religious denominations. Some deal with sexual involvement with counselees. Many seminaries utilize a text which contains a case of unethical conduct involving a relationship between a clergyman and a church member (e.g. Casebook on Church & Society by Keith Bridston & Fred Foulkes).

COMPLAINTS OF UNETHICAL CONDUCT FILED AGAINST CHEMICAL DEPENDENCY OR DRUG ABUSE COUNSELORS

At the present time there is no code of ethics in use for chemical dependency counselors in the State of Minnesota although there is a state organization of those involved in the provision of these services. While attempts are being made to change the situation, at present these counselors are not certified or licensed by the state.

There has been some concern about vulnerability of clients in the field as evidenced by the traditional avoidance within Alcoholics Anonymous of having male sponsors for female members and vice versa. (Which is aimed at potential heterosexual relationships.)

At present complaints about the conduct of chemical dependency counselors can be taken only to the Board of Directors or other governing body of the program or facility in which the counselor is employed. My personal experience as a consultant to groups around the country has led me to believe that sexual exploitation is not uncommon in chemical dependency or drug abuse treatment programs, which means that the absence of a code of ethics and complaint procedure may constitute a serious problem around the country.

Exploitation of women clients in a variety of treatment programs was the subject of a major study funded by the Drug Abuse Council, some of the results of which were published in: Ponsor, Laura; Soler, Esta, and Abod, Jenifer "The A-B-C's of Drug Treatment for Women" (STASH Capsules, Vol.8, No. 5 May 1976--Student Assn. for the Study of Hallucinogens, 118 S. Bedford St., Madison, Wisc. 53703). The article ends with the following statement:

> "In the past, women have learned the A-B-C's of drug treatment. "A" is for "Act as if..." "B" is for "Ball your counselor..." and "C" is for "Crawl on your stomach and cry for help..."

COMPLAINTS OF UNPROFESSIONAL CONDUCT FILED AGAINST MARRIAGE & FAMILY COUNSELORS

Of the 4,000 or so members of the American Association of Marriage and Family Counselors, most are psychologists or social workers. However, some are ministers or other types of counselors. Membership in the association requires a specified amount of professional training and supervised experience and is a sort of certification in and of itself. A branch of the association, the Upper Midwest Assn. of Marriage and Family Counselors, covers Minnesota and the two Dakotas. While Marriage and Family Counselors are licensed in some states, their efforts to develop licensure in Minnesota have not yet been successful, so only the sanctions of the professional association exist. In Jan. 1977 the association's Board passed an amendment to its"Code of Professional Ethics" (4 pages) relevant to sex between client and counselor:

> "Marriage and family counselors attempt to avoid relationships with clients which might impair their professional judgment or increase the risk of exploiting clients. Examples of such relationships include: treatment of family members, close friends, employees, or supervisees. Sexual intimacy with clients is unethical." (underlining is mine)

I. UPPER MIDWEST ASSOCIATION OF MARRIAGE & FAMILY COUNSELORS:

This professional organization is run by an Executive Committee and has a standing committee on ethics. Since the chairman of the national Committee on Ethics and Professional Practices, Gene Burke, is a Minnesotan, he serves as acting chairman of the local committee.

If a complaint is made he carries on an informal discussion with the parties involved. If he feels that the complaint is a serious one which justifies formal action, he refers it on to the Committee on Ethics and Professional Practices of the American Association of Marriage and Family Counselors which he chairs. Only the national association takes action.

Contact: Gene Burke 347-2210
Chairman, Committee on Ethics & Professional Practices
Amer. Assn. of Marriage & Family Counselors
C/O Psychiatry Service
Henn. Co. Medical Ctr.
701 Park Avenue S.
Minneapolis, Minn.
55415

II. AMERICAN ASSOCIATION OF MARRIAGE & FAMILY COUNSELORS:

The Committee on Ethics and Professional Practices has handled several cases of sexual misconduct with clients in the past several years, although none were from Minnesota. When a complaint is received the committee and its legal counsel decide how to proceed in order to establish the facts and guarantee due process. The committee recommends action to the Executive Committee of the Board of Directors which can: 1. reprimand; 2. suspend membership; 3. drop membership. However, the association does not make such action public or contact places of work or teaching.

COMPLAINTS OF UNPROFESSIONAL CONDUCT FILED AGAINST PSYCHIATRISTS

All psychiatrists are physicians and as such are expected to subscribe to codes of ethics and behavior which apply to physicians. All take the Oath of Hippocrates, which states in part:

> "Into whatever houses I enter I will go into them for the benefit of the sick and will abstain from every voluntary act of mischief and corruption; and further from the seduction of females or males, bond or free."

The American Medical Association, a private organization of the nation's physicians, has published "Opinions and Reports of the Judicial Council" (80 pages) which includes the Oath of Hippocrates, the Principles of Medical Ethics, and lengthy discussion of the code. In recent years the American Psychiatric Association, a private national organization of psychiatrists, elaborated the Principles of Medical Ethics to explicitly state "Sexual activity with the patient is unethical." ("The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry" American Journal of Psychiatry 1973, Vol. 130 pp.1058-64)

As with psychologists complaints can be pursued through professional channels (e.g. the county medical society or Minn. Psychiatry Society) or through a state Board which reviews licenses. There are, however, two professional channels, each of which can be utilized if the psychiatrist is a member of that professional body.

I. ETHICS COMMITTEE, MINNESOTA PSYCHIATRIC SOCIETY:

The Minn. Psychiatric Soc. is a branch of the Amer. Psychiatric Assn. Its Ethics Committee investigates complaints of unethical conduct made against psychiatrists who are members of the society. It only has jurisdiction over its own members. Complaints can initially be made by phone but must eventually be made in writing. After a complaint is made a few members of the Committee meet with each side to decide on what action is warranted. The Committee can recommend that the Board censure a psychiatrist and/or remove him or her from membership in the society. It can also forward such a complaint to the APA if the psychiatrist is a member of that body.

The committee has had only one complaint alleging sexual involvement with a client in the past 3-4 years and sent that on to the Board of Medical Examiners. The current chairman feels that their sanctions are not very formidable and views sexual misconduct as serious enough to warrant a licensure complaint, and so tends to refer cases on. The current Ethics Committee Chairman is:

Joel Finkelstein, M.D. 588-0661
Minneapolis Clinic of Psychiatry & Neurology
4225 Golden Valley Road
Minneapolis, Minnesota
55455

II. MEDICAL ETHICS COMMITTEE, COUNTY MEDICAL SOCIETY:

Since each county in the state has its own Medical Society, all of which are affiliated with the American Medical Assn., the Hennepin County Medical Society will be utilized here for purposes of illustration.

If a psychiatrist is a member of the Hennepin County Medical Society, and most are, the Medical Ethics Committee can investigate any complaints. It has no jurisdiction over non-members. After a complaint is received an investigation is conducted utilizing the Executive Secretary of the Society as staff. If enough evidence is found to warrant a hearing, the Chairman conducts a hearing utilizing the Society's legal advisor and a court reporter, with witnesses under oath. This hearing attempts to determine the facts of the case and afterwards the Chairman recommends a course of action to the Board of directors of the Henn. Co. Medical Society. The Board can censure and/or suspend or expell the psychiatrist from membership in the Society. If such actions are taken it can contact the State Board of Medical Examiners as well as all hospitals with which the psychiatrist is connected and inform them of the action taken. This is the only professional ethics committee which can take the latter action, which could constitute a fairly heavy sanction. (This power has not yet been tested legally.)

The committee has had complaints of sexual misconduct by psychiatrists brought to its attention, but they were not members of the society and so could only be forwarded to the State Board of Medical Examiners.

Contact the Executive Secretary or Chairman of the Medical Ethics Committee of the county medical society to make a complaint. In Hennepin County, for example, contact:

Dr. Harley J. Racer — 927-3430 (office)
Chairman, Medical Ethics Committee
Hennepin County Medical Society

or

Mr. Thomas W. Hoban — 333-3231
Executive Secretary
Hennepin County Medical Society
20 S. Washington Ave.
Minneapolis, Minn. 55401

III. STATE BOARD OF MEDICAL EXAMINERS, STATE OF MINNESOTA:

This Board is a state agency responsible for the licensing of physicians (including psychiatrists) in the State of Minnesota. Under current state law all physicians must be licensed. The Board's membership includes physicians as well as members of the lay public. The Board exists to protect the public interest and its disciplinary proceedings are legal actions in which the State of Minnesota is a party representing the public, not the profession. By law the Board can withdraw the grant of a license to practice medicine in the State of Minnesota if a serious violation of the Code of Medical Ethics can be proven.

The Office of the Attorney General of the state assigns a Special Assistant Attorney General to represent the Board on behalf of the state. The Board can also utilize a professional investigator.

When a complaint is received, it is forwarded to the Board's attorney for review as to whether the alleged facts, if true, provide the Board with jurisdiction to proceed. Once this determination is made, the attorney may recommend investigation to the Board's Secretary-Treasurer, who then investigates. Once the results of an investigation are complete, the entire file is again reviewed to determine whether or not there is probable cause to believe that a licensee was engaged in activities which constitute grounds upon which discipline can be taken. If it is decided that he or she was engaged in such activities the full Board authorizes a hearing as well as further investigation to pull together sufficient evidence for the state to sustain its burden of proof at a hearing.

An informal hearing is generally held with the Board's attorney, two or three Board members, the professional being charged and his or her attorney. They discuss the charges and their validity, seriousness, and what action by the Board seems appropriate. If an understanding can be reached at this point it is incorporated into a written stipulation which outlines the alleged (but not necessarily admitted) facts and includes a proposed disciplinary order to which the psychiatrist agrees. He or she then must accept these terms or go into a formal hearing.

A hearing examiner (lawyer) from the state Office of Hearing Examiners presides at the formal hearing and has the job of ruling on legal motions and evidentiary questions. The professional who has been accused is present along with whichever witness is testifying. There is no jury and each witness testifies alone. Witnesses are cross-examined. At the conclusion the hearing examiner renders a recommended decision which is sent along with the transcript of the hearing to the Board of Medical Examiners.

The Board renders the final decision. It can go along with the recommendation of the hearing examiner or reach its own decision. It has the final legal authority, although the psychiatrist being charged can appeal the decision in District Court. Its decision is made public, although the transcript remains privileged and the names of the clients are not made public.

The Board can: 1. Remove or suspend a license (thus preventing a psychiatrist from practicing in the state); 2. Restrict a psychiatrist's practice (e.g. forbid him or her to do psychotherapy; require that he or she receive supervision); 3. Require personal therapy prior to reinstatement of a license; 4. Issue a public censure; etc.

The Board has handled several cases alleging sexual misconduct by psychiatrists in the past several years, at least one of which resulted in the removal of a license as well as public censure.

Contact: Mr. Arthur Poore 296-5534
Executive Secretary
State Board of Medical Examiners
State Dept. of Health Bldg., Rm. 352
717 Delaware Street SE
Minneapolis, Minnesota 55440

COMPLAINTS OF UNPROFESSIONAL CONDUCT FILED AGAINST PSYCHOLOGISTS

The American Psychological Assn. publishes"Ethical Standards of Psychologists" (8 pages) and a "Casebook on Ethical Standards of Psychologists"(86 pages) giving examples of cases of alleged unethical conduct and how they were judged by the APA (including cases of alleged hetero and homosexual involvement with clients). A revised code has recently been accepted which specifically forbids sex between client and therapist under Principle 6--Welfare of the Consumer (APA Monitor, March 1977, pp.22-23):

> "a.Psychologists are continually cognizant of their own needs and of their inherently powerful position vis a vis clients, in order to avoid exploiting their trust and dependency. Psychologists make every effort to avoid dual relationships with clients and/or relationships which might impair their professional judgment or increase the risk of client exploitation. Examples of such dual relationships include treating employees, supervisees, close friends or relatives. Sexual intimacies with clients are unethical." (underlining is mine)

I. ETHICS COMMITTEE, MINNESOTA PSYCHOLOGICAL ASSOCIATION:

The Minn. Psychological Assn. is a private organization of psychologists which is closely affiliated with the American Psychological Assn. and utilizes the APA's code of ethics. Most psychologists are members of the association, whose Ethics Committee, which consists of psychologists who are members of the association, can thereby investigate complaints of unethical conduct made against them. (Allegations against psychologists who are not members of MPA or APA must be handled by other bodies.)

MPA's Ethics Committee has handled three cases of alleged sexual involvement with clients during the last six years. Complaints or inquiries can be made by phone or mail initially, although if action is to be taken a formal written complaint is necessary. The committee conducts its own investigation in whatever fashion seems appropriate.

The Ethics Committee reaches a decision and then makes a recommendation to the Board of Directors of the Minn. Psychological Assn. which has the power to: 1. Censure; 2. Suspend or remove the psychologist's membership in MPA; 3. Pass the complaint on to the APA for possible removal of membership; 4. Forward the complaint to the Board of Psychology to see if the psychologist's license should be removed (see below). The MPA cannot prevent a psychologist from practicing.

Contact: William Schofield, Ph.D. 373-1905
Chairman, Ethics Committee, MPA
Box 393 Mayo Hospital
Minneapolis, Minnesota 55455

II. BOARD OF PSYCHOLOGY, STATE OF MINNESOTA:

This Board is a state agency responsible for the licensing of psychologists engaged in the private practice of psychology. Under current state law not all psychologists need be licensed (e.g. those

working in a public agency don't), although all private practicioners must be. Membership on the Board includes psychologists and public ("consumers") representatives. The Board exists to protect the public interest and its disciplinary proceedings are legal actions in which the State of Minnesota is a party representing the public, not the profession. By law the Board can withdraw the grant of a license to engage in the private practice of psychology in Minnesota if a violation of the Psychology Practice Act can be proven. The Board's powers and duties are defined by the state legislature.

The Office of the Attorney General of the state assigns a Special Assistant Attorney General to represent the Board on behalf of the state. The Board can also utilize a professional investigator.

When a complaint is received, it is forwarded to the Board's attorney for review as to whether the alleged facts, if true, provide the Board with jurisdiction to proceed. Once this determination is made, the attorney may recommend investigation to the Board's ethics panel. Once the results of an investigation are complete, the entire file is again reviewed to determine whether or not there is probable cause to believe that a licensee was engaged in activities which constitute grounds upon which discipline can be taken. If it is decided that he or she was engaged in such activities the full Board authorizes a hearing as well as further investigation to pull together sufficient evidence for the state to sustain its burden of proof at a hearing.

An informal hearing is generally held with the Board's attorney, two or three Board members, the professional being charged and his or her attorney. They discuss the charges and their validity, seriousness, and what action by the Board seems appropriate. If an understanding can be reached at this point it is incorporated into a written stipulation which outlines the alleged (but not necessarily admitted) facts and includes a proposed disciplinary order to which the psychologist agrees. He or she then must accept these terms or go into a formal hearing.

A hearing examiner (lawyer) from the state Office of Hearing Examiners presides at the formal hearing and has the job of ruling on legal motions and evidentiary questions. The professional who has been accused is present along with whichever witness is testifying. There is no jury and each witness testifies alone. Witnesses are cross-examined. At the conclusion the hearing examiner renders a recommended decision which is sent along with the transcript of the hearing to the Board of Psychology.

The Board renders the final decision. It can go along with the recommendation of the hearing examiner or reach their own decision. They have the final legal authority, although the psychologist being charged can appeal the decision in District Court. Their decision is made public, although the transcript remains privileged and the names of the accusers are not made public.

The Board can: 1. Remove or suspend a license (thus prevent the psychologist from doing private practice in the State of Minn.); 2. Restrict a psychologist's practice (e.g. forbid him or her to do psychotherapy; require that he or she receive supervision); 3. Require personal therapy prior to reinstatement of a license; 4. Issue a public censure; etc.

Contact: Loring MacAlister, Ph.D. 455-9651 (Dakota Co. MH Ctr.)
Chairman, Board of Psychology 296-5419 (Board of Psychology)
717 Delaware Street SE, Room 343
Minneapolis, Minnesota 55440

COMPLAINTS OF UNPROFESSIONAL CONDUCT FILED AGAINST SOCIAL WORKERS

The National Association of Social Workers publishes "NASW Standards for Social Work Personnel Practices" (39 pages) which contains a"Code of Ethics" (2 pages) plus a publication on "NASW Policy and Procedures for the Adjudication of Grievances" (13 pages). The "Code of Ethics" is short and quite general and does not specifically speak to the issue of sex between client and therapist, although two of its principles might include this area of behavior:

> "*I give precedence to my professional responsibility over my personal interests.
> *I practice social work within the recognized knowledge and competence of the profession."

("Code of Ethics" pp. 38-39 of "NASW Standards for Social Work Personnel Practices" NASW 1975)

Although Social Workers are licensed in some states and are attempting to introduce licensure in Minnesota, currently they are not licensed in Minnesota so the only avenue of complaint open is to the professional organization--NASW and it's Minnesota Chapter.

I. MINNESOTA CHAPTER, NASW--COMMITTEE ON INQUIRY:

This committee of five members has jurisdiction over all social workers who are members of NASW. If a social worker is not a member of NASW it has no jurisdiction.

The NASW complaint procedure, although aimed primarily at complaints related to work within agencies as opposed to clients complaining about unethical therapists, is spelled out in great detail in "NASW Policy and Procedures for the Adjudication of Grievances." The process begins through contacting the NASW office for materials and guidelines. Complaints must be filed within 30 days of the occurance,with the only exception allowed under the current rules being in situations where the Committee decides that the situation is "exceptional" and "provided it has only recently come to the complainant's attention." (This may effectively rule out most sex-between-client-and-therapist complaints since most clients wait quite a lengthy period before considering a complaint.)

Complainants are urged to press the complaint through other channels (grievance procedure within the agency; additional resources outside the agency) prior to approaching the Committee on Inquiry and the complainant is required to submit detailed information concerning other attempts to resolve the problem. Also to be submitted are a list of individuals who might be in a position to substantiate the charges as well as any documentary sources of information which might support the claim. The complainant must also indicate in what way one or more principles contained in the "Code of Ethics" was violated.

A hearing should be held within 45 days of the receipt of the complaint. The complainant may not be represented by an attorney but may bring an NASW member to aid in the presentation of the case. Considerable burden is placed on the complainant to present the case. A final report and recommendations for action should be completed within 45 days of the hearing.

The final report, which does not contain the names of the complainant or the accused, is submitted to the officers of the chapter for review. If they don't agree with the recommendations they can send the report back to committee for reconsideration, but can't reverse the decision. If the committee decides not to change its report, then it stands as the final decision. There is an appeal process spelled out in the procedures.

The committee may recommend: 1. Restitution by the accused if harm was done; 2. Censure by the chapter; 3. Censure by the national Board of Directors; 4. Suspension of membership in NASW and/or ACSW (Academy of Certified Social Workers); 5. "Permanent exclusion from NASW and/or ACSW membership"; 6. Publication of the findings and penalties imposed.

Approval of the national Board of Directors is necessary in order for recommendations concerning NASW or ACSW membership or publication of findings to be carried out.

In recent years the Committee of Inquiry of the Minnesota Chapter of NASW has received no complaints of alleged sexual misconduct by a social worker. (In fact, almost all complaints received relate to complaints filed by social workers against agencies for violations of standards.)

To make a complaint contact the Chairperson of the Committee on Inquiry.

Contact: John H. Graf, ACSW
NASW
22 N. Dale St.
St. Paul, Minn.55102

226-8835 (NASW)
348-3553 (work phone)

II. NATIONAL ASSN. OF SOCIAL WORKERS--COMMITTEE ON INQUIRY:

This committee would have jurisdiction over a social worker who was an NASW member but who did not belong to the Minnesota Chapter.

Its procedures are identical to those described above for the Minnesota chapter. It has more staff and legal counsel. It would be contacted through the assistance of the Minnesota Chapter (see above).